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No. 91-569

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In The
Supreme Court of the United States
October Term, 1991

STATE OF WASHINGTON; WASHINGTON STATE
PATROL; GEORGE B. TELLEVIK,

Petitioners,

v.

CONFEDERATED TRIBES OF THE COLVILLE
RESERVATION; LAWRENCE FRY,

Respondents.

Petition For A Writ Of Certiorari To The
United States Court Of Appeals
For The Ninth Circuit

OPPOSITION TO PETITION FOR
WRIT OF CERTIORARI

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QUESTION PRESENTED

The Confederated Tribes of the Colville Reservation (Tribes) disagrees with Washington's statement of the question presented. The Tribes believes the issue is:

Whether a state, under the civil jurisdiction provisions of Pub.L. 83-280 is precluded from enforcing a scheme of traffic regulation against tribal Indians driving on their reservation which utilizes only state civil jurisdiction, civil procedure, and civil sanctions; when the tribe has adopted a similar civil scheme of traffic regulation, patrols the reservation with tribal police officers, and has given tribal police commissions to enforce tribal law to all municipal, county, and state officers willing to accept such tribal commissions?

TABLE OF CONTENTS

QUESTION PRESENTED	i
STATEMENT OF THE CASE	1
REASONS TO DENY THE WRIT	2
A. <u>Not A Case Of National</u> <u>Significance</u>	2
B. <u>The Ninth Circuit Correctly</u> <u>Applied The Law As</u> <u>Interpreted By This Court</u>	3
C. <u>There Is No Conflict</u> <u>Between The Ninth And</u> <u>Seventh Circuit Decisions</u>	11
D. <u>There Is No Void Or</u> <u>Irregularity In Traffic</u> <u>Enforcement On The Colville</u> <u>Indian Reservation</u>	12
E. <u>Other Arguments</u>	14
CONCLUSION	14

TABLE OF AUTHORITIES

Cases

Bryan v. Itasca County,	
462 U.S. 373 (1976)	4, 5, 9
California v. Cabazon Band of Mission Indians,	
480 U.S. 202, 107 S.Ct. 1083, 1087-1088, 94	
L.Ed. 2d 249 (1987)	5, 9
City of Wenatchee v. Durham, 718 P.2d 819,	
822 n.3, 43 Wn.App. 457 (1986)	8
Confederated Tribes of the Colville	
Reservation v. Washington, 938	
F.2d 146 (9th Cir. 1991)	2, 9, 12
Kennewick v. Fountain,	
802 P.2d 1371, 116 Wn.2d 192 (1991)	8
St. Germain v. Circuit Court of Vilas County,	
938 F.2d 75 (7th Cir. 1991)	11, 12
State v. Long,	
705 P.2d 245, 104 Wn. 2d 285 (1985)	8
Three Affiliated Tribes of the Fort Berthold	
Reservation v. Wold Engineering,	
476 U.S. 877; 106 S.Ct. 2305, 2311; 90	
L.Ed. 2d 881 (1986)	5
Washington v. Yakima Indian Nation,	
439 U.S. 463, 472-73, 499 (1979)	1

Statutes

25 U.S.C. 1321	4
25 U.S.C. 1322	4
25 USC §1326	14
Public Law 83-280	1, 2, 4, 5, 10, 11, 14
RCW 37.12.010(8)	1
RCW 46.63	1-3, 5-12, 14

Other Authorities

Colville Tribal Code Title 9.5	12
Hoeman, <u>Washington's Decriminalization of Minor</u>	
<u>Traffic Offenses</u> , 17 Gonzaga Law	
Review 609 (1982)	8
Opinions of the Attorney General of Washington,	
1981, No. 4, pg. 2	8

I.

STATEMENT OF THE CASE

In 1953 Congress enacted Public Law 83-280, a federal offer for states including Washington to accept jurisdiction over Indian Country. Washington v. Yakima Indian Nation, 439 U.S. 463, 472-73, 499 (1979). Washington asserted criminal traffic jurisdiction over reservation Indians under P.L. 83-280 in 1963. Ibid.; RCW 37.12.010(8).

In 1980, the Washington Legislature decriminalized much of the regulation of traffic utilizing civil jurisdiction, processes, and sanctions to replace the criminal traffic regulation scheme asserted over the Reservation in 1963. Revised Code of Washington (RCW) 46.63.010 - 46.63.151 (**Appendix A**). The Tribes did not consent to the assertion of civil traffic jurisdiction on the Colville Reservation.

The Tribes filed this action on behalf of a tribal member, Lawrence Fry, Sr., itself, and

all its members; to enjoin Washington from asserting civil jurisdiction pursuant to RCW 46.63 over Colville Indians driving on the Reservation.

II.

REASONS TO DENY THE WRIT

A. Not A Case Of National Significance.

The Opinion of the Court of Appeals for the Ninth Circuit in this case, Confederated Tribes of the Colville Reservation v. Washington, 938 F.2d 146 (9th Cir. 1991), involves the interpretation of state civil jurisdiction under P.L. 83-280 in the unusual and specific circumstances where Washington has used state civil jurisdiction, processes, and sanctions to enact a scheme of civil law to regulate driving behavior; where the Tribes has enacted a civil traffic regulation scheme which mirrors that of the state; and where Washington officers have been offered tribal commissions to enforce tribal traffic law on the Reservation. This case does not deal with any statute which the Washington legisla-

ture designated as criminal. This case does not raise issues of national significance.

B. The Ninth Circuit Correctly Applied The Law As Interpreted By This Court.

In 1980, Washington enacted a specific and comprehensive statutory scheme to decriminalize the majority of state traffic offenses. RCW 46.63.010 - RCW 46.63.151 (**Appendix A**). Certain serious offenses, like driving while intoxicated, RCW 46.63.020(1), were exempted from decriminalization and remained subject to state criminal process and sanctions. RCW 46.63.020. The Tribes attacked the authority of Washington to enforce the civil infraction scheme against Colville Indians driving on the Reservation. The Tribes did not attack Washington's enforcement of offenses which retain a criminal designation under Washington law. The Tribes contends that the civil infraction scheme, RCW 46.63, is not enforceable against Colville Indians driving on the Reservation because it is beyond the scope of the civil jurisdiction Washington can receive under P.L. 83-280.

P.L. 83-280 has both a criminal jurisdiction provision, 25 U.S.C. 1321, and a civil jurisdiction provision, 25 U.S.C. 1322 (**Appendix A**). In order to assert its civil jurisdiction over reservation Indians, Washington must show that the civil statute in question is within the scope of the civil jurisdiction offered by P.L. 83-280.

This Court defined the scope of the civil jurisdiction offered by P.L. 83-280 in Bryan v. Itasca County, 462 U.S. 373 (1976). Under P.L. 83-280, states can obtain civil jurisdiction only over civil disputes between private Indian parties arising on the reservation.

In Bryan v. Itasca County, 426 U.S. 373, 96 S. Ct. 2102, 48 L.Ed.2d 710 (1976), we interpreted §4 to grant statutes jurisdiction over private civil litigation involving reservation Indians in state court, but not to grant general civil regulatory authority. The Minnesota personal property tax at issue in Bryan was unquestionably civil in nature. (emphasis supplied)

California v. Cabazon Band of Mission Indians, 480 U.S. 202, 107 S.Ct. 1083, 1087-1088, 94 L.Ed. 2d 249 (1987).

Because P.L. 83-280 diminishes tribal sovereignty, its provisions are strictly construed in favor of limiting assertions of state jurisdiction to the clearly discernible scope of the statute. Three Affiliated Tribes of the Fort Berthold Reservation v. Wold Engineering, 476 U.S. 877; 106 S.Ct. 2305, 2311; 90 L.Ed. 2d 881 (1986); Bryan v. Itasca County, 426 U.S. 373, at 392.

Bryan established a bright line test with regard to civil jurisdiction. RCW 46.63 is an exercise of Washington's civil jurisdiction. It is not, however, an exercise of civil jurisdiction over disputes between private Indian parties. RCW 46.63 is, therefore, outside the scope of the civil jurisdiction offered to states by P.L. 83-280.

In adopting the Disposition of Infractions Act, RCW 46.63, it is absolutely clear that Washington intended to utilize its civil jurisdiction. RCW 46.63 contains numerous instructions that its processes and sanctions are to be

considered "decriminalized," "not criminal," or "civil" in nature; RCW §§46.63.010, 46.63.020, 46.63.060(b), 46.63.120(1), 46.63.130. It utilizes all the forms and processes of civil law. Civil process is used rather than arrest. RCW 46.63.060; 46.63.130. No plea is required and a party to an infraction proceeding may be found responsible by default. RCW 46.63.060(2)(a) and (b); RCW 46.63.070(5)(a). No imprisonment may be imposed. RCW 46.64.060(2)(b). Sanctions include only restrictions on licenses and money penalties of not more than \$250.00. RCW 46.63.060(2)(b); RCW 46.64.110. No prosecutor is required to appear at any hearing. RCW 46.63.080(3). No jury is permitted. RCW 46.64.090(1). The State may introduce written hearsay evidence. RCW 46.63.090(2). Washington bears only the civil burden of proof, a preponderance of the evidence. RCW 46.63.090(3). Appellate review is discretionary. RCW 46.63.090(5). "Mitigation" hearings, at which witnesses may not be made to

attend by subpoena, are available. RCW 46.63.100(1). All court orders are civil. RCW 46.63.120. Litigants in an infraction proceeding are identified in the statute as "parties"; and the court is prohibited from awarding attorney's fees to either "party" in an infraction case - an unnecessary prohibition, had the legislature regarded the statute as an assertion of criminal jurisdiction. RCW 46.63.151.

The Attorney General of Washington has opined that traffic infractions included in RCW 46.63 are civil matters and that the sanctions are civil.

... a traffic infraction (under RCW 46.63) may involve either the violation of a state statute or a local, municipal ordinance. Such a violation however, is no longer a criminal offense. Instead, any resulting prosecution is civil in nature, as are the monetary penalties which may be imposed.

Opinions of the Attorney General of Washington, 1981, No. 4, pg. 2.

Washington courts have unequivocally defined traffic infractions under RCW 46.63 as civil. Kennewick v. Fountain, 802 P.2d 1371,

116 Wn.2d 192 (1991); State v. Long, 705 P.2d 245, 104 Wn. 2d 285 (1985); City of Wenatchee v. Durham, 718 P.2d 819, 822 n.3, 43 Wn.App. 457 (1986).

The academic article explaining Washington's civil, traffic regulation scheme, Hoeman, Washington's Decriminalization of Minor Traffic Offenses, 17 Gonzaga Law Review 609 (1982); depicts an entirely civil law basis for RCW 46.63.

The Ninth Circuit, in the opinion below, recognized that Washington had, by enacting RCW 46.63, changed the basis of its traffic infraction scheme from criminal to civil. The Ninth Circuit discussed numerous civil aspects of Washington's scheme.

... because Washington treats speeding as a civil, not a criminal, offense, the officer gave Fry a civil complaint pursuant to RCW Ch. 46.63. (emphasis supplied)

Confederated Tribes of the Colville Reservation v. Washington, 938 F.2d 146 (9th Cir. 1991) at 146.

We conclude that the State may not declare certain infractions as civil, remove the panoply of constitutional and procedural protections associated with criminal offenses, save itself the time and expense of criminal trials, and then insist the same infraction is criminal for purposes of expanding state jurisdiction and appropriating the revenue raised through enforcement of the speeding laws. (emphasis supplied)

Ibid., at 148.

The Ninth Circuit correctly applied this Court's decisions in Bryan, *supra*, and Cabazon Band, *supra*, to find that RCW 46.63 may not be enforced against Colville Indians within the Reservation.

Washington argues that the only difference between Washington's traffic statutes which were in place before 1980 and RCW 46.63 is that the possibility of imprisonment for violation has been removed. There is no support for this position in any Washington authority. In oral argument before the Ninth Circuit, the Court questioned Washington directly as to whether RCW 46.63 had changed only the penalty for traffic infractions from civil to criminal, or whether

the whole system of dealing with traffic infractions in Washington had been converted to a civil enforcement scheme. Washington answered that the whole scheme for dealing with traffic infractions had been changed by RCW 46.63.

In reviewing statutes based on state civil jurisdiction to determine whether they may be imposed on reservation Indians pursuant to the provisions of P.L. 83-280, this Court has held that only those state statutes which provide for the resolution of private civil disputes among reservation Indians are within the scope of the limited civil jurisdiction offered to states by P.L. 83-280. This is the bright line which divides permissible from impermissible assertions of state civil jurisdiction over reservation Indians, and the result of the decision in the Court below is a proper interpretation of that bright line. RCW 46.63 falls outside the scope of civil jurisdiction available to states under P.L. 83-280 and may not be enforced against Colville Indians by Washington.

C. There Is No Conflict Between The Ninth And Seventh Circuit Decisions.

Whether or not the decision of the Seventh Circuit in St. Germain v. Circuit Court of Vilas County, 938 F.2d 75 (7th Cir. 1991), is a correct interpretation of state jurisdiction under P.L. 83-280, the decision is not in conflict with the decision of the Ninth Circuit. The St. Germain Court was dealing with a criminal offense. Ibid. 938 F.2d 75-76, and n.2. "Congress has made it plain that Wisconsin can enforce its criminal laws on the reservation. That is all Wisconsin is doing. This enforcement of Wisconsin driver's license public policy by the imposition of criminal sanctions ..." (emphasis supplied) Ibid. 938 F.2d, 78.

In order to add speed and efficiency to the processing of civil traffic infractions, Washington's traffic infraction statute is based on civil jurisdiction and law. To this end RCW 46.63 avoids any criminal process, stigma, or sanction. The decision of the Ninth Circuit in Confederated Tribes does not interfere with

Washington's prosecution of Indians charged with violation of Washington's criminal traffic statutes, because it deals only with Washington's civil infraction scheme and does not deal with statutes which the Washington legislature intended to be criminal like those considered by the St. Germain Court. The two Circuits are not in conflict.

D. There Is No Void Or Irregularity In Traffic Enforcement On The Colville Indian Reservation.

The Tribes has as strong an interest in maintaining traffic safety on the Colville Reservation for its members and other residents of, and visitors to, the Reservation as does Washington. The record in this case shows that the Tribes, in 1987, adopted a civil traffic infraction statute which mirrors that of Washington, Colville Tribal Code, Title 9.5; that the Tribes employs twenty tribal officers for Reservation patrol; and, that since 1984 the Tribes has offered tribal police commissions to all regular municipal, county, and state offi-

cers patrolling the Reservation so that they can stop and cite Indian traffic offenders and file civil traffic citations in the tribal court. The record shows that municipal and county police officers accepted tribal commissions. State officers refused.

With tribal commissions, all non-Indian officers operating on the Reservation have the requisite authority to stop all motorists, Indian and non-Indian, suspected of violating state and tribal traffic laws. The only difference in treatment of motorists found by an officer to have committed a civil traffic infraction, is that the Indian is cited into the tribal court and the non-Indian is cited into the county court. Traffic enforcement problems, if such exist on the Colville Reservation, result from the refusal of Washington State officers to accept tribal police commissions and to file civil citations in the tribal court.

E. Other Arguments.

Washington appears to argue in its Petition that its civil Disposition of Infractions Act, RCW 46.63, is actually an exercise of criminal jurisdiction. If the Court should consider this argument, the Tribes would argue that state enforcement is barred both because the infractions at issue are civil/regulatory and because the State violated 25 USC §1326 in adopting RCW 46.63.

CONCLUSION

The Court of Appeals ruling presents no conflict, raises no general issue, and properly applies well settled principles of this Court construing P.L. 83-280. In construing RCW 46.63 as a civil statute the ruling upholds all Washington authorities.

The Petition for Writ of Certiorari should
be denied.

Respectfully submitted,

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**APPENDIX A - APPLICABLE STATUTES
CHAPTER 46.63 WASHINGTON REVISED CODE**

DISPOSITION OF TRAFFIC INFRACTIONS

Section

46.63.010. Legislative intent

It is the legislative intent in the adoption of this chapter in decriminalization certain traffic offenses to promote the public safety and welfare on public highways and to facilitate the implementation of a uniform and expeditious system for the disposition of traffic infractions.

46.63.020. Violations as traffic infractions - Exceptions

Failure to perform any act required or the performance of any act prohibited by this title or an equivalent administrative regulation or local law, ordinance, regulation, or resolution relating to traffic including parking, standing, stopping, and pedestrian offenses, is designated as a traffic infraction and may not be classified as a criminal offense, except for an offense contained in the following provisions of this title or a violation of an equivalent administrative regulation or local law, ordinance, regulation, or resolution: -

(1) RCW 46.09.120(2) relating to the operation of a nonhighway vehicle while under the influence of intoxicating liquor or a controlled substance;

(2) RCW 46.09.130 relating to operation of nonhighway vehicles;

(3) RCW 46.10.090(2) relating to the operation of a snowmobile while under the influence of intoxicating liquor or narcotics or habit-forming drugs or in a manner endangering the person of another;

(4) RCW 46.10.130 relating to the operation of snowmobiles;

(5) Chapter 46.12 RCW relating to certificates of ownership and registration;

(6) RCW 46.16.010 relating to initial registration of motor vehicles;

(7) RCW 46.16.160 relating to vehicle trip permits;

(8) RCW 46.16.011 relating to permitting unauthorized persons to drive;

(9) RCW 46.16.381(8) relating to unauthorized acquisition of a special decal, license plate, or card for disabled persons' parking;

(10) RCW 46.20.021 relating to driving without a valid driver's license;

(11) RCW 46.20.336 relating to the unlawful possession and use of a driver's license;

(12) RCW 46.20.342 relating to driving with a suspended or revoked license;

(13) RCW 46.20.410 relating to the violation of restrictions of an occupational driver's license;

(14) RCW 46.20.416 relating to driving while in a suspended or revoked status;

(15) RCW 46.20.420 relating to the operation of a motor vehicle with a suspended or revoked license;

(16) RCW 46.20.750 relating to assisting another person to start a vehicle equipped with an ignition interlock device;

(17) Chapter 46.29 RCW relating to financial responsibility;

(18) RCW 46.44.180 relating to operation of mobile home pilot vehicles;

(19) RCW 46.48.175 relating to the transportation of dangerous articles;

(20) RCW 46.52.010 relating to duty on striking an unattended car or other property;

(21) RCW 46.52.020 relating to duty in case of injury to or death of a person or damage to an attended vehicle;

(22) RCW 46.52.090 relating to reports by repairmen, storagemen, and appraisers;

(23) RCW 46.52.100 relating to driving under the influence of liquor or drugs;

(24) RCW 46.52.130 relating to confidentiality of the driving record to be furnished to an insurance company, an employer, and an alcohol/drug assessment or treatment agency;

(25) RCW 46.55.020 relating to engaging in the activities of a registered tow truck operator without a registration certificate;

(26) RCW 46.61.015 relating to obedience to police officers, flagmen, or fire fighters;

(27) RCW 46.61.020 relating to refusal to give information to or cooperate with an officer;

(28) RCW 46.61.022 relating to failure to stop and give identification to an officer;

(29) RCW 46.61.024 relating to attempting to elude pursuing police vehicles;

(30) RCW 46.61.500 relating to reckless driving;

(31) RCW 46.61.502 and 46.61.504 relating to persons under the influence of intoxicating liquor or drugs;

(32) RCW 46.61.520 relating to vehicular homicide by motor vehicle;

(33) RCW 46.61.522 relating to vehicular assault;

(34) RCW 46.61.525 relating to negligent driving;

(35) RCW 46.61.530 relating to racing of vehicles on highways;

(36) RCW 46.61.685 relating to leaving children in an unattended vehicle with the motor running;

(37) RCW 46.64.010 relating to unlawful cancellation of or attempt to cancel a traffic citation;

(38) RCW 46.64.020 relating to nonappearance after a written promise;

(39) RCW 46.64.048 relating to attempting, aiding, abetting, coercing, and committing crimes;

(40) Chapter 46.65 RCW relating to habitual traffic offenders;

(41) Chapter 46.70 RCW relating to unfair motor vehicle business practices, except where that chapter provides for the assessment of monetary penalties of a civil nature;

(42) Chapter 46.72 RCW relating to the transportation of passengers in for hire vehicles;

(43) Chapter 46.80 RCW relating to motor vehicle wreckers;

(44) Chapter 46.82 RCW relating to driver's training schools;

(45) RCW 46.87.260 relating to alteration or forgery of a cab card, letter of authority, or other temporary authority issued under chapter 46.87 RCW;

(46) RCW 46.87.290 relating to operation of an unregistered or unlicensed vehicle under chapter 46.87 RCW.

46.63.030. Notice of traffic infraction -
Issuance

(1) A law enforcement officer has the authority to issue a notice of traffic infraction:

(a) When the infraction is committed in the officer's presence;

(b) When the officer is acting upon the request of a law enforcement officer in whose presence the traffic infraction was committed; or

(c) If an officer investigating at the scene of a motor vehicle accident has reasonable cause to believe that the driver of a motor vehicle involved in the accident has committed a traffic infraction.

(2) A court may issue a notice of traffic infraction upon receipt of a written statement of the officer that there is reasonable cause to believe that an infraction was committed.

(3) If any motor vehicle without a driver is found parked, standing, or stopped in violation of this title or an equivalent administrative regulation or local law, ordinance, regula-

tion, or resolution, the officer finding the vehicle shall take its registration number and may take any other information displayed on the vehicle which may identify its user, and shall conspicuously affix to the vehicle a notice of traffic infraction.

46.63.060. Notice of infraction - Determination final unless contested - Form

(1) A notice of traffic infraction represents a determination that an infraction has been committed. The determination will be final unless contested as provided in this chapter.

(2) The form for the notice of traffic infraction shall be prescribed by rule of the supreme court and shall include the following:

(a) A statement that the notice represents a determination that a traffic infraction has been committed by the person named in the notice and that the determination shall be final unless contested as provided in this chapter;

(b) A statement that a traffic infraction is a noncriminal offense for which imprisonment may not be imposed as a sanction; that the penalty for a traffic infraction may include sanctions against the person's driver's license including suspension, revocation, or denial; that the penalty for a traffic infraction related to standing, stopping, or parking may include nonrenewal of the vehicle license;

(c) A statement of the specific traffic infraction for which the notice was issued;

(d) A statement of the monetary penalty established for the traffic infraction;

(e) A statement of the options provided in this chapter for responding to the notice and the procedures necessary to exercise these options;

(f) A statement that any hearing to contest the determination the state has the

burden of proving, by a preponderance of the evidence, that the infraction was committed; and that the person may subpoena witnesses including the officer who issued the notice of infraction;

(g) A statement that at any hearing requested for the purpose of explaining mitigating circumstances surrounding the commission of the infraction the person will be deemed to have committed the infraction and may not subpoena witnesses;

(h) A statement that the person must respond to the notice as provided in this chapter within fifteen days or the person's driver's license will not be renewed by the department until any penalties imposed pursuant to this chapter have been satisfied;

(i) A statement that failure to appear at a hearing requested for the purpose of contesting the determination or for the purpose of explaining mitigating circumstances will result in the refusal of the department to renew the person's driver's license, or in the case of a standing, stopping, or parking violation the vehicle license, until any penalties imposed pursuant to this chapter have been satisfied;

(j) A statement, which the person shall sign, that the person promises to respond to the notice of infraction in one of the ways provided in this chapter;

(k) A statement that failure to respond to a notice of infraction as promised is a misdemeanor and may be punished by a fine or imprisonment in jail.

46.63.070. Response to notice of traffic
 infraction - Contesting determi-
 nation - Hearing - Failure to
 respond or appear

(1) Any person who receives a notice of traffic infraction shall respond to such notice as provided in this section within fifteen days of the date of the notice.

(2) If the person determined to have committed the infraction does not contest the determination the person shall respond by completing the appropriate portion of the notice of infraction and submitting it, either by mail or in person, to the court specified on the notice. A check or money order in the amount of the penalty prescribed for the infraction must be submitted with the response. When a response which does not contest the determination is received, an appropriate order shall be entered in the court's records, and a record of the response and order shall be furnished to the department in accordance with RCW 46.20.270.

(3) If the person determined to have committed the infraction wishes to contest the determination the person shall respond by completing the portion of the notice of infraction requesting a hearing and submitting it, either by mail or in person, to the court specified on the notice. The court shall notify the person in writing of the time, place, and date of the hearing, and that date shall not be sooner than seven days from the date of the notice, except by agreement.

(4) If the person determined to have committed the infraction does not contest the determination but wishes to explain mitigating circumstances surrounding the infraction the person shall respond by completing the portion of the notice of infraction requesting a hearing for that purpose and submitting it, either by mail or in person, to the court specified on the notice. The court shall notify the person in writing of the time, place, and date of the hearing.

(5)(a) If any person issued a notice of traffic infraction:

(i) Fails to respond to the notice of traffic infraction as provided in subsection (2) of this section; or

(ii) Fails to appear at a hearing requested pursuant to subsection (3) or (4) of this section;

the court shall enter an appropriate order assessing the monetary penalty prescribed for the traffic infraction and any other penalty authorized by this chapter and shall notify the department in accordance with RCW 46.20.270, of the failure to respond to the notice of infraction or to appear at a requested hearing.

(b) The department may not renew the driver's license, or in the case of a standing, stopping, or parking violation the vehicle license, of any person for whom the court has entered an order pursuant to (a) of this subsection until any penalties imposed pursuant to this chapter have been satisfied. For purposes of driver's license nonrenewal only, the lessee of a vehicle shall be considered to be the person to whom a notice of a standing, stopping, or parking violation has been issued for such violations of the vehicle incurred while in the vehicle was leased or rented under a bona fide business of leasing vehicles and a lessee who is not the vehicle's registered owner, if the lease agreement contains a provision prohibiting anyone other than the lessee from operating the vehicle. Such a lessor shall, upon the request of the municipality issuing the notice of infraction, supply the municipality with the name and driver's license number of the person leasing the vehicle at the time of the infraction.

46.63.080. Hearings - Rules of procedure -
 Counsel

(1) Procedures for the conduct of all hearings provided for in this chapter may be established by rule of the supreme court.

(2) Any person subject to proceedings under this chapter may be represented by counsel.

(3) The attorney representing the state, county, city, or town may appear in any proceedings under this chapter but need not appear,

notwithstanding any statute or rule of court to the contrary.

46.63.090. Hearings - Contesting determination that infraction committed - Appeal

(1) A hearing held for the purpose of contesting the determination that an infraction has been committed shall be without a jury.

(2) The court may consider the notice of traffic infraction and any other written report made under oath submitted by the officer who issued the notice or whose written statement was the basis for the issuance of the notice in lieu of the officer's personal appearance at the hearing. The person named in the notice may subpoena witnesses, including the officer, and has the right to present evidence and examine witnesses present in court.

(3) The burden of proof is upon the state to establish the commission of the infraction by a preponderance of the evidence.

(4) After consideration of the evidence and argument the court shall determine whether the infraction was committed. Where it has not been established that the infraction was committed an order dismissing the notice shall be entered in the court's records. Where it has been established that the infraction was committed an appropriate order shall be entered in the court's records. A record of the court's determination and order shall be furnished to the department in accordance with RCW 46.20.270 as now or hereafter amended.

(5) An appeal from the court's determination or order shall be to the superior court. The decision of the superior court is subject only to discretionary review pursuant to Rule 2.3 of the Rules of Appellate Procedure.

46.63.100. Hearings - Explanation of mitigating circumstances

(1) A hearing held for the purpose of allowing a person to explain mitigating circumstances surrounding the commission of an infraction shall be an informal proceeding. The person may not subpoena witnesses. The determination that an infraction has been committed may not be contested at a hearing held for the purpose of explaining mitigating circumstances.

(2) After the court has heard the explanation of the circumstances surrounding the commission of the infraction an appropriate order shall be entered in the court's records. A record of the court's determination and order shall be furnished to the department in accordance with RCW 46.20.270 as now or hereafter amended.

(3) There may be no appeal from the court's determination or order.

46.63.110. Monetary penalties

(1) A person found to have committed a traffic infraction shall be assessed a monetary penalty. No penalty may exceed two hundred and fifty dollars for each offense unless authorized by this chapter or title.

(2) The supreme court shall prescribe by rule a schedule of monetary penalties for designated traffic infractions. This rule shall also specify the conditions under which local courts may exercise discretion in assessing fines and penalties for traffic infractions. The legislature respectfully requests the supreme court to adjust this schedule every two years for inflation.

(3) There shall be a penalty of twenty-five dollars for failure to respond to a notice of traffic infraction except where the infraction relates to parking as defined by local law, ordinance, regulation, or resolution or failure to pay a monetary penalty imposed pursuant to

this chapter. A local legislative body may set a monetary penalty not to exceed twenty-five dollars for failure to respond to a notice of traffic infraction relating to parking as defined by local law, ordinance, regulation, or resolution. The local court, whether a municipal, police, or district court, shall impose the monetary penalty set by the local legislative body.

(4) Monetary penalties provided for in chapter 46.70 RCW which are civil in nature and penalties which may be assessed for violations of chapter 46.44 RCW relating to size, weight, and load of motor vehicles are not subject to the limitation on the amount of monetary penalties which may be imposed pursuant to this chapter.

(5) Whenever a monetary penalty is imposed by a court under this chapter it is immediately payable. If the person is unable to pay at that time the court may, in its discretion, grant an extension of the period in which the penalty may be paid. If the penalty is not paid on or before the time established for payment the court shall notify the department of the failure to pay the penalty, and the department may not renew the person's driver's license until the penalty has been paid and the penalty provided in subsection (3) of this section has been paid.

46.63.120. Order of court - Civil nature -
Waiver, reduction, suspension of
penalty - Community service in
lieu of penalty

(1) An order entered after the receipt of a response which does not contest the determination, or after it has been established at a hearing that the infraction was committed, or after a hearing for the purpose of explaining mitigating circumstances is civil in nature.

(2) The court may include in the order the imposition of any penalty authorized by the provisions of this chapter for the commission of

an infraction. The court may, in its discretion, waive, reduce, or suspend the monetary penalty prescribed for the infraction. At the person's request the court may order performance of a number of hours of community service in lieu of a monetary penalty, at the rate of the then state minimum wage per hour.

46.63.130. Issue of process by court of limited jurisdiction

Notwithstanding any other provisions of law governing service of process in civil cases, a court of limited jurisdiction having jurisdiction over an alleged traffic infraction may issue process anywhere within the state.

46.63.140. Presumption regarding stopped, standing, or parked vehicles

(1) In any traffic infraction case involving a violation of this title or equivalent administrative regulation or local law, ordinance, regulations, or resolution relating to the stopping, standing, or parking of a vehicle, proof that the particular vehicle described in the notice of traffic infraction was stopping, standing, or parking in violation of any such provision of this title or an equivalent administrative regulation or local law, ordinance, regulation, or resolution, together with proof that the person named in the notice of traffic infraction was at the time of the violation the registered owner of the vehicle, shall constitute in evidence a prima facie presumption that the registered owner of the vehicle was the person who parked or placed the vehicle at the point where, and for the time during which, the violation occurred.

(2) The foregoing stated presumption shall apply only when the procedure prescribed in RCW 46.63.030(3) has been followed.

46.63.150. Costs and attorney's fees

(1) The court may suspend either a portion or all of the costs of the action except amounts paid for allocation to the payment of costs associated with the judicial information system.

(2) The court may not award attorney's fees or costs to the defendant in a traffic infraction case.

46.63.151. Costs and attorney fees

Each party to a traffic infraction case is responsible for costs incurred by that party. No costs or attorney fees may be awarded to either party in a traffic infraction case.

P.L. LAW 83-280

25 U.S.C. § 1322. Assumption by State of civil jurisdiction

(a) Consent of United States; force and effect of civil laws

The consent of the United States is hereby given to any State not having jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country situated within such State to assume, with the consent of the tribe occupying the particular Indian country or part thereof which would be affected by such assumption, such measure of jurisdiction over any or all such civil causes of action arising within such Indian country or any part thereof as may be determined by such State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country or part thereof as they have elsewhere within that State.